

JUL 28 2006

PATENT

Attorney Docket No. 33508/US/2/DJB/VEJ/RBE
Attorney Matter No. 463678-00253
Application No. 10/525,143**REMARKS**

Reconsideration of this Application is respectfully requested. Applicants thank the Examiner for his time and courtesy extended during the personal interview of July 14, 2006. The Examiner's Interview Summary accurately reflects the substance of the interview.

Upon entry of the foregoing amendments, claims 1, 3-11, 13-16, 18-20, 22, and 23 are pending in the application, with claim 1 being the independent claim. Claims 2, 12, 17, and 21 have been canceled without prejudice or disclaimer. Support for the subject matter of the amended claims is contained in the application as originally filed. Because the foregoing changes introduce no new matter, their entry is respectfully requested.

Based on the above Amendment and the following Remarks, Applicant respectfully requests that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

Rejections under 35 U.S.C. §§ 102 and 103***Claims 1, 3-8, 13-15, 18, and 20***

The Examiner has rejected claims 1, 3-8, 13-15, 18, and 20 under 35 U.S.C. § 102 as being anticipated by International Application No. WO 01/08996 A1 to Yu ("Yu"). Yu, taken individually or combined, fails to teach or suggest the closure of the present invention, in particular, the cutting member extending below the line of weakness, the "cutting member received within said pocket", and the "inclined line of weakness." Yu further fails to teach or suggest the axial fixing of the overcap as called for by amended claim 1.

Yu fails to teach or suggest that the "cutting member extends *below* said lower terminus when said base cap is assembled to said overcap", as is called for by amended claim 1. Instead, Yu discloses a spin-opening bottle cap for separating solute and solvent including a threaded top cover 10 with a cutting element 13 connected to a lower cover 20. *See* Yu, page 2. The vertical distance between the bottom of a security strip 11 in the top cover 10 and the bottom of cutting

PATENT

Attorney Docket No. 33508/US/2/DJB/VEJ/RBE
Attorney Matter No. 463678-00253
Application No. 10/525,143

element 13 equals or is less than the distance between the bottom of a shoulder 24 on the lower cover 20 and the bottom of the sealing sheet 22. *See* Yu, page 9. The structure “aligns the location of the bottom cutter of the cutting element 13 *on top of the bottom sealing sheet 22* when ... the security seal 11 ... is attached.” *Id.* (emphasis added) Thus, upon assembly of the top cover and lower cover, the cutting element is *above* the frangible membrane. Only in use with the security seal removed does the lower end of the cutting element extend below the line of weakness of the sealing sheet. *See* Yu, page 10.

In contrast, the overcap and base cap structure of the present invention aligns the cutting member within a pocket such that the cutting member extends below a lower terminus of the frangible membrane. In particular, upon assembly of the base cap and overcap, the cutting member extends into the pocket to a level that is slightly below the lower terminus. *See* ¶ 35, page 8. In this manner, the cutting member will sever the line of weakness upon rotation of the overcap relative to the base cap without having to first remove a security strip and lower the cutting member. *See* ¶ 45, page 11. This advantageously eliminates the need for axial motion thereby allowing for a lower profile of the closure. *See* ¶ 46, page 12.

Additionally, Yu fails to teach or suggest the “cutting member ... substantially received within said pocket”, as is called for by amended claim 1. The Examiner argues that Yu discloses “a pocket to hold the knife.” *See* Office Action, ¶ 12. Applicant respectfully disagrees. Yu discloses an inside casing 21 with an optional connector piece 222 and a dimple 221. *See* Yu, page 9. The dimple 221 is formed by the connector piece 222 below the lower edge of the cutting element. The dimple thus merely allows the bottom point or edge of the cutting element to lower below and contact the frangible edge of the sealing sheet after removal of the security strip. The dimple and connector piece are also dimensioned to allow the sealing sheet to fall away after cutting but still prevent the cut sheet from falling into the container. *See* Yu, page 10. As can be seen from the figures, however, the dimensions of the dimple only allows a bottom point of the cutting element to be received so as to keep the cutting element from cutting the connector piece as well.

AMENDMENT AND REPLY

8 of 11

4826-0009-4209\1

PATENT

Attorney Docket No. 33508/US/2/DJB/VEJ/RBE
Attorney Matter No. 463678-00253
Application No. 10/525,143

In contrast, the pocket of the present invention is dimensioned so that the cutting member is “substantially received” within the pocket upon assembly. The pocket is dimensioned to receive the cutting member such that the cutting edge of the cutting member sits in the pocket does not contact the line of weakness until the overcap is rotated a predetermined angle. See ¶ 35, page 8 and ¶ 39, page 9. Thus, a substantial portion or more than just the mere bottom point of the cutting member is received in the pocket.

Lastly, Yu fails to teach or suggest the “*inclined* line of weakness” called for by amended claim 1. Instead, Yu discloses a flat sealing sheet 22 with a frangible edge. As described and shown in FIGs. 1 and 3, the frangible edge of the sealing sheet is horizontal. See Yu, FIGs. 1 and 3. In contrast, the frangible membrane of the present invention is inclined and extends along a helical path. See ¶ 36, page 8. The incline shape modifies the cutting angle of the cutting edge and allows the cutting membrane to gradually cut into the line of weakness.

For at least these reasons, Applicant respectfully submits that Yu, taken individually or combined, do not anticipate independent claim 1. Applicant submits that claims 2-8, 13-15, 18, and 20, which depend from claim 1, are allowable over the cited art for at least the same reasons noted above.

Claims 9-11, 16, 19, and 22-23

The Examiner has rejected claims 9-11, 16, 19, and 22-23 under 35 U.S.C. § 103 as being unpatentable over Yu in combination with U.S. Patent Publication No. 2003/0132244 to Birkmayer et al. (“Birkmayer”) and U.S. Patent No. 6,477,743 to Gross et al. (“Gross”). Yu, Birkmayer, and Gross, taken individually or combined, fail to teach or suggest the closure called for by amended claim 1. The arguments made above with respect to claim 1 are reasserted here.

The Examiner cites to Birkmayer as teaching removal of a security band by rotation of the present invention. Birkmayer fails to make up for the deficiencies of Yu. Further, Birkmayer fails to teach or suggest the “axial fixing” of the overcap, as is called for by amended claim 1. Instead, Birkmayer discloses a twist closure including supply container 4 within a

AMENDMENT AND REPLY

9 of 11

4826-0009-4209\1

PATENT

Attorney Docket No. 33508/US/2/DJB/VEJ/RBE
Attorney Matter No. 463678-00253
Application No. 10/525,143

specially modified container wall 66 and screw cap 2 thread to the supply container. As a user screws the screw cap, the cap *advances axially* downward and cuts the container bottom.

The Examiner cites to Gross as teaching an aperture in the overcap and dust cap of the present invention. Gross likewise fails to make up for the deficiencies of Yu. Gross discloses dispensing closure system including a body for extending from the container at the container opening and a spout that is carried on the body. The body and spout interact to translate rotation of the spout into *linear* motion such that the container is opened and closed. In contrast, the closure of the present invention is directed to a base cap with a frangible membrane and an overcap with a cutting member and locking structure to axially fix the overcap.

Applicant further traverse the rejection of claim 1 on the basis that Yu, Birkmayer, and Gross fail to teach or suggest a locking structure rotatably to axially fix said overcap with respect to said base cap during severing of the line of weakness. As asserted above, all three references disclose overcaps that are advanced downward to sever a line of weakness. In particular, Yu requires removal of a security strip and lowering of the cutting element before the cutting edge may contact the line of weakness.

For at least these reasons, Applicant respectfully submits that Yu, Birkmayer, and Gross, taken individually or combined, do not render obvious independent claim 1. Applicant submits that claims 9-11, 16, 19, and 22-23, which depend from claim 1, are allowable over the cited art for at least the same reasons noted above.

CONCLUSION

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicant believes that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided below.

AMENDMENT AND REPLY

10 of 11

4826-0009-4209\1

PATENT

Attorney Docket No. 33508/US/2/DJB/VEJ/RBE
Attorney Matter No. 463678-00253
Application No. 10/525,143

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extension of time or additional claims, and/or credit any overpayment to Deposit Account No. 50-2319 (Order No. 463678-00253; Docket No. 33508/US/2/DJB/VEJ).

Prompt and favorable consideration of this Amendment and Response is respectfully requested.

Respectfully submitted,

DORSEY & WHITNEY LLP

Date: July 28, 2006By: 

Victor E. Johnson, Reg. No. 41,546

DORSEY & WHITNEY LLP
Suite 1000
555 California Street
San Francisco, California 94104-1513
Telephone: (415) 781-1989 Facsimile: (415) 398-3249